

FILED
08 JUL 14 2011 11:58
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 **PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**2 Name GONZALES ANTHONY D.
(Last) (First) (Initial)

3 Prisoner Number V-50565 V97347

4 Institutional Address P.O. BOX 4000, VACAVILLE, CA 95696

6 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

8 ANTHONY DANIEL GONZALES

9 (Enter the full name of plaintiff in this action.)

CV 08

RMW 3378

Case No. _____
(To be provided by the clerk of court)

10 JAMES E. TILTON, SECRETARY,

11 CALIFORNIA DEPARTMENT OF CORRECTIONS

13 _____

14 (Enter the full name of respondent(s) or jailor in this action)

**PETITION FOR A WRIT
OF HABEAS CORPUS**16 **Read Comments Carefully Before Filling In**17 **When and Where to File**

18 You should file in the Northern District if you were convicted and sentenced in one of these
 19 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,
 20 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in
 21 this district if you are challenging the manner in which your sentence is being executed, such as loss of
 22 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

23 If you are challenging your conviction or sentence and you were not convicted and sentenced in
 24 one of the above-named fifteen counties, your petition will likely be transferred to the United States
 25 District Court for the district in which the state court that convicted and sentenced you is located. If
 26 you are challenging the execution of your sentence and you are not in prison in one of these counties,
 27 your petition will likely be transferred to the district court for the district that includes the institution
 28 where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainers), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
13 County Superior Court, Oakland):

Santa Clara County Superior Court San Jose

15 Court Location

16 (b) Case number, if known H031002

9/9/05; 16 years to life

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
19 parole or probation, etc.) Yes No

20 | Where?

California State Prison - Solano

P.O. Box 4000, Vacaville, CA 95696

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
25 challenging more than one sentence, you should file a different petition for each sentence.)

One count of violation of Cal. Penal Code section 187, subdivision (a) - Murder, second degree

plus enhancement for personal use of deadly and dangerous weapon within the meaning of

28 | Cal. Penal Code section 12022, subdivision (b)(1)

1 3. Did you have any of the following?

2 Arraignment: Yes No _____

3 Preliminary Hearing: Yes No _____

4 Motion to Suppress: Yes _____ No

5 4. How did you plead?

6 Guilty _____ Not Guilty Nolo Contendere _____

7 Any other plea (specify) _____

8 5. If you went to trial, what kind of trial did you have?

9 Jury Judge alone _____ Judge alone on a transcript _____

10 6. Did you testify at your trial? Yes No _____

11 7. Did you have an attorney at the following proceedings:

12 (a) Arraignment Yes No _____

13 (b) Preliminary hearing Yes No _____

14 (c) Time of plea Yes No _____

15 (d) Trial Yes No _____

16 (e) Sentencing Yes No _____

17 (f) Appeal Yes No _____

18 (g) Other post-conviction proceeding Yes No _____

19 8. Did you appeal your conviction? Yes No _____

20 (a) If you did, to what court(s) did you appeal?

21 Court of Appeal Yes No _____

22 Year: 2006 Result: Affirmed _____

23 Supreme Court of California Yes No _____

24 Year: 2007 Result: Review denied _____

25 Any other court Yes _____ No

26 Year: _____ Result: _____

27 (b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes No

(c) Was there an opinion? Yes No

(d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes No ✓

If you did, give the name of the court and the result:

6 _____
7 _____
8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes No

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

I. Name of Court: California Court of Appeal, Sixth Appellate District

19 Type of Proceeding: Petition for Writ of Habeas Corpus

20 Grounds raised (Be brief but specific):

a. Ineffective Assistance of Counsel- Failure to Consult Expert

b. Ineffective Assistance of Counsel - Failed to Object to Exhibit Packaging

Ineffective Assistance of Counsel - Fail to Object Prosecutor Misconduct

24 | Page

Result: Denied Date of Result: 5/23/07

36 Name of Court:

27 Type of Proceeding:

28 Grounds raised (Be brief but specific):

1 a. _____

2 b. _____

3 c. _____

4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: _____

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____

10 b. _____

11 c. _____

12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____

18 b. _____

19 c. _____

20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?
28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
 3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
 4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Trial counsel provided ineffective assistance by failing to consult and call to testify
 6 expert on knives or provide support for claim petitioner opened knife with one hand

7 Supporting Facts: Petitioner claimed decedent and others attacked him & piled on top of him,
 8 endangering his life. Removing folding knife from his pocket, he opened it with one hand,
 9 using stud on knife, then stabbed decedent in self-defense. Prosecutor argued impossible to
 10 open knife as claimed. Expert would have disputed this claim based on knife's design feature.

11 Claim Two: Trial counsel provided ineffective assistance by failing to object to court ruling
 12 knife could only go into jury room in pressurized packaging which prevented handling

13 Supporting Facts: Counsel wanted jurors to be able to handle and test knife to determine
 14 it could be opened in manner petitioner claimed. She asked court to allow knife into jury room
 15 but then failed to object to ruling and explain that packaging would impede effective testing.
 16 In fact, jurors could not manipulate knife through packaging so as to test it as needed.

17 Claim Three: Trial counsel provided ineffective assistance by failing to object to improper
 18 argument amounting to prosecutorial misconduct.

19 Supporting Facts: Prosecutor argued facts outside the evidence by claiming it was impossible
 20 to open the knife with one hand as petitioner claimed. No one had so testified, but prosecutor
 21 insisted this impossibility meant petitioner was lying. Counsel neither objected to this
 22 argument nor effectively addressed the contention in her closing argument.

23 If any of these grounds was not previously presented to any other court, state briefly which
 24 grounds were not presented and why:

25 Not applicable

26
 27
 28

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 Caro v. Calderon, 165 F.3d 1223 (9th Cir. 1998)

5 Strickland v. Washington 466 U.S. 668 (1984)

6 Sanders v. Ratelle 21 F.3d 1446 (9th Cir. 1994)

7 Do you have an attorney for this petition? Yes No

8 If you do, give the name and address of your attorney:

9 Steven Schorr, P.O. Box 910496, San Diego, CA 92191-0496

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

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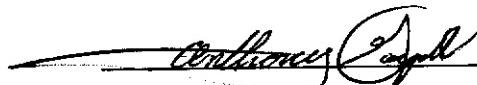
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Executed on 5-12-08

Date



Signature of Petitioner

(Rev. 6/02)

PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is P.O. Box 910496, San Diego, California 92191. On the date shown below, I served the within PETITION FOR WRIT OF HABEAS CORPUS to the following parties hereinafter named by:

- X Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Clara, California, addressed as follows:

Attorney General's Office
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Attn: Jeffrey M. Laurence, DDA
[Counsel for Respondent]

James E. Tilton, Secretary
California Department of Corrections
1515 "S" Street
Sacramento, CA 95814

Anthony Daniel Gonzales
#V-97347
California State Prison - Solano
P.O. Box 4000
Vacaville, CA 95696

I declare under penalty of perjury the foregoing is true and correct. Executed this 11th day of July, 2008, at San Diego, California.



Steven Schorr